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Clerk, U.S. District and
Bankruptcy Courts

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KEURIG, INC.

55 Walkers Brook Drive
Reading, MA 01867

Plaintiff,

v.

HON. DAVID KAPPOS,
Under Secretary of Commerce for
Intellectual Property and Director of the
United States Patent and Trademark Office.
Office of General Counsel, United States
Patent and Trademark Office,

Madison Building East, Rm. 10B20
600 Dulany Street,
Alexandria, Virginia 22314

Defendant.

Case: 1:09-cv-02353
Assigned To : Walton, Reggie B.
Assign. Date : 12/11/2009
Description: General Civil

**COMPLAINT UNDER 35 U.S.C. § 145
TO AUTHORIZE THE DIRECTOR TO ISSUE LETTERS PATENT**

Plaintiff, Keurig, Inc. ("Keurig"), by and through its attorneys, alleges as follows:

NATURE OF THE ACTION

1. This case concerns a novel beverage filter cartridge and the erroneous denial by the United States Patent & Trademark Office ("PTO") of patent protection for that technology. Keurig is the assignee of U.S. Patent Application Serial No. 10/658,925 ("the '925 application") and is dissatisfied with a decision by the Board of Patent Appeals and Interferences ("the Board"). Keurig seeks judgment, pursuant to 35 U.S.C. § 145, that it is entitled to a patent.

THE PARTIES

2. The plaintiff, Keurig, Inc. is a corporation organized and existing under the laws of Delaware, and has its principal place of business at 55 Walkers Brook Drive, Reading, MA 01867.

3. The defendant is the Honorable David Kappos, in his official capacity as Under Secretary of Commerce for Intellectual Property and Director of the PTO, having offices at 600 Dulany Street, Alexandria, Virginia 22314.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action and is authorized to issue the requested relief pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1361; 35 U.S.C. § 145; and 5 U.S.C. §§ 701-706.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e) and 35 U.S.C. § 145.

6. This Complaint is being timely filed in accordance with 35 U.S.C. § 145 and 37 C.F.R. § 1.304(a).

GENERAL ALLEGATIONS

7. Basil Karanikos and Fredrick Rossi developed an innovative new type of beverage filter cartridge. The cartridge that they developed has been commercialized as the fluted-filter "K-Cup®," which is used with Keurig brewing systems to produce single servings of beverages such as coffee. Fluted-filter K-Cups® are superior to conventional beverage cartridges because they increase the available storage capacity for a beverage medium (e.g., ground coffee) while also balancing considerations such as flow rate and filter surface area, thereby optimizing saturation of the medium. Beverages brewed using

fluted-filter K-Cups® have stronger flavor profiles than beverages brewed using conventional beverage filter cartridges.

8. The cartridge that Karanikos and Rossi developed is described and claimed in the '925 application, titled "Beverage Filter Cartridge."

9. Keurig is the sole owner of the '925 application. Keurig acquired all right, title, and interest in the '925 application by virtue of an assignment by and from the application's sole inventors, Karanikos and Rossi.

10. The '925 application was filed in the PTO on September 10, 2003. As presently amended, the '925 application contains claims 1-44.

11. On or about January 25, 2008, a PTO Examiner issued final rejections of claims 1-44 of the '925 application as being unpatentable under 35 U.S.C. § 103(a). With respect to claims 1-4, 7, 12-14, 17, and 22-44, the PTO Examiner cited and relied upon the following references: (a) Sylvan et al U.S. Patent No. 5,325,765 ("Sylvan") and (b) Spiteri U.S. Patent Publication No. 2002/0185010 ("Spiteri"). With respect to claims 3, 5, 6, 9-11, 15-16, 19-21, and 32, the PTO Examiner cited and relied upon the following references: (a) Sylvan, (b) Spiteri, and (c) Daswick U.S. Patent No. 3,971,305 ("Daswick"). With respect to claims 8 and 18, the PTO Examiner cited and relied upon the following references: (a) Sylvan, (b) Spiteri, and (c) Michielsen U.S. Patent No., 3,389,650 ("Michielsen").

12. The '925 applicants duly and timely appealed from the PTO Examiner's rejection to the Board, under 35 U.S.C. § 134(a).

13. On July 24, 2009, the Board issued a Decision on Appeal. The Board sustained and affirmed the rejection of claims 1-4, 7, 12-14, 17, and 22-44 as unpatentable over Sylvan and Spiteri. The Board also sustained and affirmed the rejection of claims 8 and 18 as unpatentable over Sylvan, Spiteri and Michielsen. The Board further sustained and affirmed the rejection of claims 3, 5, 6, 9, 15-16, 19, and 32 as unpatentable over Sylvan, Spiteri, and Daswick. The Board reversed the rejection of claims 10, 11, 20, and 21. A copy of the Board's Decision on Appeal is attached hereto as Exhibit A.

14. On September 23, 2009, the '925 applicants requested rehearing of the Decision on Appeal.

15. On or about October 14, 2009, the Board denied the request for rehearing. A copy of the Board's Decision on Request for Rehearing is attached hereto as Exhibit B.

16. The PTO made reversible errors of fact and law during its administrative examination and review of the '925 application. Specifically, the PTO erred in rejecting claims 1-4, 7, 12-14, 17, and 22-44 as allegedly obvious over Sylvan and Spiteri. The PTO also erred in rejecting claims 8 and 18 as allegedly obvious over Sylvan, Spiteri, and Michielsen. The PTO further erred in rejecting claims 3, 5, 6, 9, 15-16, 19, and 32 as allegedly obvious over Sylvan, Spiteri, and Daswick. The PTO's errors included a failure to apply correct legal standards for obviousness during its examination and review, and a failure to give proper consideration to the evidence of record.

17. Additional evidence not of record in the PTO further confirms that claims 1-9, 12-19, and 22-44 of the '925 application comply with 35 U.S.C. § 103(a) and should therefore be allowed. For example, and without limitation, there is considerable objective evidence of nonobviousness, including but not limited to the fact that the filter design covered by the claims was contrary to conventional wisdom in the industry as to the correct approach for optimizing saturation of the beverage medium and otherwise producing a filter cartridge desirable to consumers.

18. Plaintiff has not appealed to the United States Court of Appeals for the Federal Circuit from the Board's Decision on Appeal. This complaint is being filed within two months of the Board's Decision on Request for Rehearing and therefore complies with 35 U.S.C. § 145 and 37 C.F.R. § 1.304(a).

19. Claims 1-9, 12-19, and 22-44 of the '925 application satisfy the applicable statutory and regulatory requirements and are patentable. As assignee of the '925 application, Keurig is entitled to an issued patent for the invention covered by Claims 1-9, 12-19, and 22-44.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that Judgment be entered for Plaintiff, and that Plaintiff be granted the following relief:

A. Judgment that the PTO erred in concluding that Claims 1-9, 12-19, and 22-44 of the '925 application do not satisfy the requirements of the Patent Statute, 35 U.S.C. § 1 et seq.

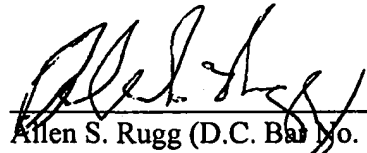
B. Judgment that Plaintiff is entitled to receive Letters Patent for the invention as described and claimed in the '925 application, in due form of law as prescribed by the Patent Statute, Title 35, United States Code, § 1 et seq.

C. Judgment pursuant to Title 35, United States Code, § 145, authorizing the Director of the United States Patent and Trademark Office to issue Letters Patent on the invention described and claimed in the '925 application in due form of law and as prescribed by the Patent Statute, Title 35, United States Code, § 1 et seq.

D. Such other and further relief as this Court may deem just and proper.

Dated: 12/10/2009

Respectfully submitted,


Allen S. Rugg (D.C. Bar No. 204933) ✓

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EXHIBIT A

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**CLERK, U.S. DISTRICT COURT
BANKRUPTCY COURT**

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BASIL KARANIKOS and FREDRICK ROSSI

Appeal 2009-003780
Application 10/658,925
Technology Center 1700

Decided¹: July 24, 2009

Before CHUNG K. PAK, KAREN M. HASTINGS, and
MICHAEL P. COLAIANNI, *Administrative Patent Judges*.

PAK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1 through 44, all of the pending claims in the above-

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

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identified application. We have jurisdiction under 35 U.S.C. § 6(b).²

We AFFIRM-IN-PART.

STATEMENT OF THE CASE

The subject matter on appeal “relates generally to single serve beverage brewing systems, and is concerned in particular with an improved filter cartridge for use in such systems” (Spec. 1). Details of the appealed subject matter are recited in representative claims 1, 12, and 44 reproduced below:

1. A beverage filter cartridge comprising:

a container having a container bottom and a container side wall extending upwardly from said container bottom to a top opening;

a filter element having a filter bottom and a filter side wall extending upwardly from said filter bottom, said filter element being received in said container and directly joined at a peripheral juncture to an interior of said container side wall, the interior of said container thus being subdivided by said filter element into a first chamber accessible via said top opening, and a second chamber, wherein pleats or flutes in said filter side wall form exit channels leading to said second chamber, and said exit channels are located between said container side wall and said filter side wall;

a beverage medium received in said first chamber via said top opening; and

a cover closing said top opening, said cover being piercable to admit liquid into said first chamber for contact with said beverage medium to produce a beverage, said filter element being permeable to accommodate the flow therethrough of said beverage for delivery via said exit channels to said second chamber, and said container bottom being piercable to accommodate an outflow of said beverage from said cartridge.

12. A beverage filter cartridge comprising:

² An oral hearing was held on June 9, 2009.

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a container having a side wall and a bottom;

a filter element having a side wall and a bottom, said filter element being arranged to subdivide the interior of said container into a first chamber inside said filter element and a second chamber located outside said filter element, said filter element being directly joined to an interior of the container side wall at a peripheral juncture, and said filter sidewall having corrugations, having at least a portion that is permeable, and being arranged so that at least a portion of said filter side wall is spaced inwardly from and out of contact with said container side wall; and

a cover enclosing at least a portion of the first chamber.

44. A beverage filter cartridge comprising:

a container having a side wall and a bottom;

a filter element having a side wall and a bottom, said filter element being arranged to subdivide the interior of said container into a first chamber inside said filter element and a second chamber located outside said filter element, said filter element being directly joined to an interior of the container side wall at a peripheral juncture, and said filter sidewall having corrugations and being arranged so that at least a portion of said filter side wall is spaced inwardly from and out of contact with said container side wall; and

a cover enclosing at least a portion of the first chamber.

The Examiner relied upon the following prior art references as evidence of unpatentability (Ans. 3-4):

Michielsen	US 3,389,650	Jun. 25, 1968
Daswick	US 3,971,305	Jul. 27, 1976
Sylvan	US 5,325,765	Jul. 5, 1994
Spiteri	US 2002/0185010 A1	Dec. 12, 2002

The Examiner rejected the claims on appeal as follows (Ans. 4-8):

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1. Claims 1 through 4, 7, 12 through 14, 17, and 22 through 44 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Sylvan and Spiteri;
2. Claims 3, 5, 6, 9 through 11, 15, 16, 19 through 21, and 32 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Sylvan, Spiteri, and Daswick; and
3. Claims 8 and 18 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Sylvan, Spiteri, and Michielsen.

Appellants traverse the Examiner's § 103(a) rejections, arguing that one of ordinary skill in the art would not have had any reason to employ the fluted or pleated filter taught by Spiteri as the filter of Sylvan's beverage filter cartridge (App. Br. 6-22 and Reply Br. 1-4). In support of their position, Appellants refer to two Rule 132 Declarations in Appendix B to the Appeal Brief, but focus primarily on the Rule 132 Declaration executed by Karl Winkler on November 21, 2007 (*id.*).

Appellants also separately argue the angle of the side wall of the filter recited in claims 5, 6, 15, and 16, the permeability rates of the lower and upper regions of the filter recited in claims 9 and 19 and the increased thicknesses of the lower region of the filter recited in claims 10, 11, 20, and 21 (App. Br. 22-23).

ISSUES AND CONCLUSIONS

Have Appellants identified reversible error in the Examiner's determination that one of ordinary skill in the art would have been led to employ the fluted or pleated filter taught by Spiteri as the filter of Sylvan's beverage filter cartridge, with a reasonable expectation of successfully

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providing the filtering function within the meaning of 35 U.S.C. § 103(a)?

On this record, we answer this question in the negative.

Have Appellants demonstrated that the Rule 132 Declarations relied upon are sufficient to rebut any inference of obviousness established by the Examiner? On this record, we answer this question in the negative.

Have Appellants identified reversible error in the Examiner's determination that one of ordinary skill in the art would have been led to employ a fan shape or truncated cone shape filter having the side wall angles recited in claims 5, 6, 15, and 16 within the meaning of 35 U.S.C. § 103(a)? On this record, we answer this question in the negative.

Have Appellants identified reversible error in the Examiner's determination that one of ordinary skill in the art would have been led to employ a filter having lower and upper regions having the different permeability rates recited in claims 9 and 19 within the meaning of 35 U.S.C. § 103(a)? On this record, we answer this question in the negative.

Have Appellants identified reversible error in the Examiner's determination that one of ordinary skill in the art would have been led to employ a filter having the lower and upper regions having different thicknesses imparting different permeability rates as recited in claims 10, 11, 20, and 21 within the meaning of 35 U.S.C. § 103(a)? On this record, we answer this question in the affirmative.

RELEVANT FINDINGS OF FACT

1. Appellants do not dispute the Examiner's finding at page 5 of the Answer that:

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Sylvan discloses a coffee filter including a filter cartridge comprising a brew basket container with bottom and side walls in portion 64 extending upwards to a closing cover 62 having top opening 72 (column 4, lines 16-27). The cartridge houses filter element 16 with bottom 56 and sloping side walls 50 and 52 (column 3, lines 54-60), the filter element being *joined directly at a peripheral junction 24 with the adjacent interior wall surface of the cartridge housing (see column 3, lines 48-62 and figure 4)*. The filter element is of synthetic paper fibers such as of polypropylene. The interior of the filter cartridge is thus divided into a first chamber housing beverage 22 and second chamber 42 receiving outflow from the filter (column 3, line 66-column 4, line 3). [(Compare Ans. 5, with App. Br. 6-22 and Reply Br. 1-4 and see also col. 3, l. 48 to col. 4, l. 26.)]

2. Sylvan teaches the disadvantage of sagging and conforming the filter to the interior wall of a receptacle at column 1, lines 30-38 as shown below:

In one construction a filter is provided in a sealed receptacle but included intermediate the receptacle When the filter is wetted it sags and conforms with the support member which has a hole in it to release the filtered beverage but otherwise blocks the output of the filter. Such a filter design used in an application where water is injected under pressure would provide low flow rates.

3. Sylvan teaches (col. 3, ll. 4-26) (emphasis added) that:

The filter element may be made of a lightweight, two-phase heat sealable paper of cellulosic and synthetic fibers. The synthetic fibers may be PVC or polypropylene so that they are compatible with the material of the base and are therefore easily sealed to the base using heat, ultrasonic energy or microwave energy. *In addition, the material of the filter is such that the filter is totally self-supporting. Even when it is wetted, it will not collapse or sag against the inner walls of the base.* The filter can have the shape of a cone, a truncated cone, or a triangular prism which *fans out* and blends into a circular base. The filter is smaller than and non-congruent with the base so

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that it diverges and divides the base into two sealed chambers.
... This enlarged volume of the second chamber enhances the filter flow since *the filter is not in contact or in any way blocked by the walls of the base*, and water can flow through the entire filter surface.

4. Sylvan desires a filtering system useful for providing a high flow rate (col. 1, ll. 43-45).
5. Sylvan is not limited to employing a filter having a generally truncated cone shape or a truncated triangular prism (identical or similar to a fan shape) in its coffee filter cartridge; it teaches that its filter can be in any predetermined shape useful for its coffee filter cartridge (col. 2, ll. 8-16 and col. 3, ll. 13-15).
6. Sylvan does not specifically mention that the filter (the claimed filter element) employed has a side wall having flutes, pleats, or corrugations as required by claims 1, 12 and 44 (Ans. 5).
7. Appellants do not dispute the Examiner's finding that Spiteri teaches a fan-shaped filter comprising a side wall having the pleats or flutes (corresponding to the claimed pleats, flutes or corrugations on the side walls of filters) recited in claims 1, 12, and 14. (*Compare* Ans. 5, *with* App. Br. 6-22 and Reply Br. 1-4).
8. Spiteri teaches (p. 1, paras. 0005 and 0007) that:

Fan shaped filters of the type discussed here serve for making filtered drinks, specially coffee drinks, in a simple way. The self support filter is intended to be used only once and is adapted to be stood on the inside of a vessel such as a coffee basket

Said filter supporting members conventionally consist of folds, formed and contrived on the paper itself, arranged at an angle from the vertical axis, and along the edges of the walls.

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9. Spiteri teaches (p. 1, paras. 0009 and 0011) (emphasis added) that:

One of the objects on which the present invention is based is to design a foldable filter of the aforementioned type, so that while maintaining its flexibility yet the rigid properties added by means of folding and pleating the paper, can withstand the sagging moment of said paper when wet. To achieve this object, the sagging resistant filter according to the invention, includes at least a minimum of four folds acting as supporting members, and arranged in pairs at opposite sides of the filter.

....
The self supporting filter designed in this way requires only *a small amount of additional material added* to a conventional fan shaped paper filter, to compensate for the pleats and folds, and yet to maintain the same linear and volumetric dimensions when unfolded into said vessel receptacle of said coffee maker.

10. Appellants do not dispute that the use of the fluted or pleated filter taught by Spiteri in the Sylvan cartridge increases an effective filtering area (App. Br. 20).

11. Spiteri teaches a fan shaped filter having folds and pleats that is geometrically configured in size dimensions so that it can be placed within the interior of a conventional coffee brewer, such as an electric drip brewer (p. 2, para. 0021).

12. Spiteri is not limited to employing its fluted or pleated filter to an electric drip brewer; it teaches employing its fluted or pleated filter to any conventional coffee brewers which embraces those conventional coffee brewers taught by Sylvan (*id*).

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13. Appellants refer to two Rule 132 Declarations executed by Karl Winkler on November 21, 2007 and June 29, 2007, respectively in APPENDIX B of the Appeal Brief.

14. According to the Rule 132 Declarations, Karl Winkler was hired to assess the Examiner's § 103 rejections.

15. The Declaration executed on June 29, 2007 focuses on the § 103(a) rejections based on Sylvan and Frise (US Patent No. 3,971,305), which are no longer maintained by the Examiner in the Answer.

16. The Declaration executed on November 21, 2007 is directed to the Examiner's § 103 rejections set forth in the Answer.

17. Both Declarations have not established that Karl Winkler has any legal expertise in assessing rejections based on 35 U.S.C. § 103(a).

18. The opinion in paragraph 9 of the Declaration executed on November 21, 2007 does not take into account the fact that Spiteri teaches that its filters can be used with any conventional coffee brewers which generically include those conventional coffee brewers taught by Sylvan.

22. The opinions in paragraphs 6, 7 and 8 of the Declaration executed on November 21, 2007 do not take into account the fact that Sylvan requires any filter employed, such as the filter suggested by Spiteri, be made with a material (such as a lightweight, two-phase heat sealable paper of cellulosic and synthetic fibers) that would resist any sagging, when wet, in its particular coffee brewer means.

23. The opinions in paragraphs 6, 7 and 8 of the Declaration executed on November 21, 2007 do not take into account the fact that Sylvan requires that any filter employed, including that taught by Spiteri, be not in contact or

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in any way blocked by the walls of a base (the interior wall of its filter cartridge).

24. Daswick teaches that a filter side wall angle can be identical to the interior chamber wall angle of a base without touching the interior chamber wall (col. 3, l. 63 to col. 4, l. 8 and Fig. 5).

25. Appellants do not dispute the Examiner's determination that it would have been obvious to one of ordinary skill in the art to employ the corrugation features recited in claims 8 and 18, as taught by Michielsen, in the fluted or pleated fan or truncated cone-shaped filter suggested by Sylvan and Spiteri within the meaning of 35 U.S.C. § 103(a). (*Compare* Ans. 8 *with* App. Br. 23-24.)

PRINCIPLES OF LAW

Under 35 U.S.C. § 103, the factual inquiry into obviousness requires a determination of: (1) the scope and content of the prior art; (2) the differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) secondary considerations, if any. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966).

As stated in *KSR Int'l Co., v. Teleflex Inc.*, 550 U.S. 398, 417-18 (2007):

[A]nalysis [of whether the subject matter of a claim would have been prima facie obvious] need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.

For instance, "when a patent 'simply arranges old elements with each performing the same function it had been known to perform' and yields no

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more than one would expect from such an arrangement, the combination is obvious.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. at 417 (quoting *Sakraida v. Ag Pro, Inc.*, 425 U.S. 273, 282 (1976)).

The analysis should take into account the amount of reconstruction and redesign required of the prior art devices as well as changes in the basic principles of operation required to arrive at the claimed structure in finding whether there is a suggestion in the prior art to make the combination. *In re Ratti*, 270 F.2d 810, 813 (CCPA 1959); *see also KSR*, 550 U.S. at 417 (stating that “if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill”). This is because the test for obviousness is not whether the features of one reference may be bodily incorporated into another reference. *In re Bozek*, 416 F.2d 1385, 1390 (CCPA 1969). Rather, it is whether the combined teachings of the prior art references as a whole would have rendered the claimed subject matter obvious. *Id.*

In analyzing obviousness, “it is proper to take into account not only specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom” *In re Hoeschele*, 406 F.2d 1403, 1406-407 (CCPA 1969). “[A] reference disclosure must be evaluated for all that it fairly [teaches] and not only for what is indicated as preferred” in determining the propriety of obviousness. *Bozek*, 416 F.2d at 1390.

[W]here the prior art gives reason or motivation to make the claimed [invention] . . . the burden (and opportunity) then falls on an applicant to rebut that *prima facie* case.

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Such rebuttal or argument can consist of . . . any other argument or presentation of evidence that is pertinent.

In re Dillon, 919 F.2d 688, 692-93 (Fed. Cir. 1990) (*en banc*). A mere pleading unsupported by proof or showing of facts is inadequate. *In re Borkowski*, 505 F.2d 713, 718 (CCPA 1974).

ANALYSIS

I. Claims 1 through 4, 7, 12 through 14, 17, and 22 through 44 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Sylvan and Spiteri.

Appellants do not dispute the Examiner's finding that Sylvan teaches a coffee filter cartridge identical to the beverage filter cartridge recited in claims 1, 12, and 44, except for the claimed pleats, flutes or corrugations on the side wall of the filter employed.

Sylvan specifically mentions employing a filter having a generally truncated cone shape or a truncated triangular prism (identical or similar to a fan shape) in its coffee filter cartridge. However, it is not limited to a filter having such a shape. It teaches that its filter can be in any predetermined shape useful for its coffee filter cartridge.

Spiteri teaches a filter having a predetermined shape, i.e., a fan-shaped filter comprising a side wall having folds and pleats (corresponding to the claimed pleats, flutes or corrugations on the side walls of filters) for a conventional coffee brewer. Spiteri teaches adding folds and pleats to the side wall of a fan-shaped filter useful for any conventional coffee brewers, inclusive of those taught by Sylvan. The pleated fan-shaped filter, according to Spiteri, requires adding an additional amount of the filter material (area)

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to a conventional fan shape filter. In other words, adding folds and pleats to the conventional fan-shaped filter provides a more effective filtering area (thus allowing a higher liquid flow rate as required by Sylvan). Appellants do not dispute that pleats and folds in a conventional filter enlarges or increases an effective filtering area.

Spiteri also teaches that the filter can be geometrically configured in size dimensions appropriate for the interior of conventional coffee brewers. Implicit in this teaching of Spiteri is that one of ordinary skill in the art can geometrically configure its filter to a desired size dimension appropriate for a given filter cartridge, including the one required by Sylvan. Sylvan teaches that for its particular coffee filter cartridge, the filter employed must be configured to maintain a substantial space between the filter and the interior wall of the cartridge (even when the filter is wetted) for the purpose of enhancing a filtering rate.

Further, Spiteri teaches that rigid properties can be added to a paper filter by means of folding and pleating the paper filter and when at least minimum of four folds are added, they act as a supporting member. More importantly, however, Sylvan teaches that for its particular coffee brewer system, using an appropriate material in constructing its filter is important in imparting a desired rigidity. Specifically, Sylvan teaches using a material, such as a light-weight two-phase heat sealable paper of cellulosic and synthetic fibers, to make a totally self supporting filter which will not collapse or sag against the inner walls of the cartridge, when wet.

Given the above teachings, we determine that one of ordinary skill in the art would have been led to employ the filter taught by Spiteri in Sylvan's

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coffee filter cartridge in the manner suggested by Sylvan, with a reasonable expectation of successfully providing a desired high filtering function.

Appellants refer to two Rule 132 Declarations executed by Karl Winkler on November 21, 2007 and June 29, 2007, respectively in APPENDIX B of the Appeal Brief. According to the Declarations, they are directed to the opinions of Karl Winkler assessing “a rejection of patent claims made in the above-identified application.” In the argument section of the Appeal Brief, Appellants primarily focus on the Declaration executed on November 21, 2007, the only one directed to the actual rejections set forth in the Answer.

However, the Declarations are flawed³ since they do not take into account all the relevant teachings in Sylvan and Spiteri. Initially, as correctly found by the Examiner, contrary to paragraph 9 of the Declaration executed on November 21, 2007, Spiteri is not limited to using its filter with drip brewers only. Spiteri teaches that its filters can be used with any conventional coffee brewers which generically include those conventional coffee brewers taught by Sylvan.

Secondly, as correctly pointed out by the Examiner, Spiteri teaches that rigid properties can be added to a paper filter by means of folding and pleating the paper filter. More importantly, however, Sylvan requires that the filter employed, such as the filter suggested by Spiteri, be made with a material (such as a light-weight, two-phase heat sealable paper of cellulosic

³ In any event, the Declarations have not established that Mr. Karl Winkler has any expertise in patent prosecution, much less patent law, to properly assess any obviousness rejections set forth by the Examiner. Mr. Winkler, for example, has no legal expertise to properly interpret the claim scope and properly make an ultimate legal conclusion of obviousness.

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and synthetic fibers) that would resist any sagging, when wet, in its particular coffee brewer means. Sylvan also requires that any filter employed, including that taught by Spiteri, must be in a proper size dimension, even when under wet conditions, such that it is not in contact or in any way blocked by the interior wall of its filter cartridge. It follows that contrary to the opinions at paragraphs 6, 7 and 8 of the Declaration executed on November 21, 2007, one of ordinary skill in the art would have been led to employ Spiteri's appropriately constructed filter in the manner required by Sylvan as the filter of Sylvan's coffee filter cartridge, with a reasonable expectation of successfully minimizing any sagging of Spiteri's filter in Sylvan's coffee brewer system and enhancing a filtering flow rate. The opinions at paragraphs 6, 7, and 8 of the Declaration simply fail to consider the prior art references as a whole in assessing the propriety of the Examiner's § 103(a) rejections.

Thirdly, the Declarations and Appellants' arguments in the Appeal Brief and Reply Brief do not question the Examiner's finding directed to increasing a filter surface area. Since Appellants do not dispute that the addition of flutes or pleats in a conventional filter is known to increase the effective filtering area, Sylvan's desires for a high flow rate would have led one of ordinary skill in the art to employ flutes or pleats in the side wall of the filter used in Sylvan's coffee filter cartridge. The Declarations do not provide any evidence to support Appellants' assertion at pages 20 and 21 of the Appeal Brief that a high flow rate (high filtering rate) is not desirable in Sylvan's coffee brewer contrary to Sylvan's teaching.

Thus, based on this record, including due consideration of Appellants' arguments and evidence, we determine that the preponderance of evidence

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weighs most heavily in favor of obviousness regarding the subject matter of claims 1 through 4, 7, 12 through 14, 17, and 22 through 44 within the meaning of 35 U.S.C. § 103(a).

II. Claims 3, 5, 6, 9 through 11, 15, 16, 19 through 21, and 32 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Sylvan, Spiteri, and Daswick.

Sylvan and Spiteri would have suggested a fluted or pleated fan or truncated cone-shaped filter having an appropriate side wall angle as indicated *supra*. It can also be inferred from Sylvan's disclosure of a filter having a predetermined shape not touching the interior wall of a base (coffee filter cartridge) that the side wall of the fluted or pleated fan or truncated cone-shaped filter can be at any angle, inclusive of the angle recited in claim 5, 6, 15, and 16, so long as the filter side wall does not touch the interior wall of the filter cartridge. In addition, Daswick teaches that a filter side wall angle can be identical to the interior chamber wall angle of a base without touching the interior chamber wall (col. 3, l. 63 to col. 4, l. 8 and Fig. 5).

Thus, on this record, we determine that one of ordinary skill in the art would have been led to employ a fluted or pleated fan or truncated cone-shaped filter having optimum side wall angles, including those recited in claims 5, 6, 15, and 16, with a reasonable expectation of successfully producing a desired flow rate within the meaning of 35 U.S.C. § 103(a).

As to the permeability rates of lower and upper regions of the filter recited in claims 9 and 19, the fluted or pleated fan or truncated cone-shaped filter suggested by Sylvan and Spiteri would necessarily have the claimed

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permeability rates since an upper region of the fan or truncated cone-shaped filter has more filtering area than a lower region thereof.

As to separately argued claims 10, 11, 20, and 21, they stand on different footing. As correctly argued by Appellants at page 23 of the Appeal Brief, none of the applied references teaches increasing the thickness of a lower region of the filter to decrease its permeability. Daswick's element 28 relied on by the Examiner to show such claimed feature is a screen which is used to retain coffee grounds within a lower region of the filter. However, nowhere does Daswick teach that the screen increases the thickness of the lower region of the filter to decrease the permeability thereof. Nor has the Examiner sufficiently explained why one of ordinary skill in the art would have reasonably expected that Daswick's screen component 29 would provide the type of the increased thickness that would reduce the permeability of the lower region. Accordingly, Appellants have identified reversible error in the Examiner's determination that one of ordinary skill in the art, armed with the knowledge of the combined teachings of Sylvan, Spiteri and Daswick, would have been led to employ a filter having the lower and upper regions having different thicknesses imparting different permeability rates as recited in claims 10, 11, 20, and 21 within the meaning of 35 U.S.C. § 103(a).

III. Claims 8 and 18 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Sylvan, Spiteri, and Michielsen.

Appellants do not dispute the Examiner's determination that it would have been obvious to one of ordinary skill in the art to employ the claimed corrugation features taught by Michielsen in the fluted or pleated fan or truncated cone-shaped filter suggested by Sylvan and Spiteri within the

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meaning of 35 U.S.C. § 103(a). Rather, Appellants rely on the same arguments raised in connection with the Examiner's rejection of claims 1 through 4, 7, 12 through 14, 17, and 22 through 44 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Sylvan and Spiteri. Thus, for the findings of fact and conclusions set forth above, we determine that Appellants have not identified any reversible error in the Examiner's rejection of claims 8 and 18 under 35 U.S.C. § 103(a).

DECISION

In view of the foregoing:

1. The rejection of Claims 1 through 4, 7, 12 through 14, 17, and 22 through 44 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Sylvan and Spiteri is affirmed;
2. The rejection of claims 3, 5, 6, 9, 15, 16, 19, and 32 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Sylvan, Spiteri, and Daswick is affirmed;
3. The rejection of claims 10, 11, 20, and 21 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Sylvan, Spiteri, and Daswick is reversed; and
4. The rejection of claims 8 and 18 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Sylvan, Spiteri, and Michielsen is affirmed.

Accordingly, the decision of the Examiner is affirmed-in-part.

AFFIRMED-IN-PART

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BOSTON, MA 02110

EXHIBIT B

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**U.S. District Court
Southern District of New York**

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BASIL KARANIKOS and FREDRICK ROSSI

Appeal 2009-003780
Application 10/658,925
Technology Center 1700

Decided: October 14, 2009

Before CHUNG K. PAK, KAREN M. HASTINGS, and
MICHAEL P. COLAIANNI, *Administrative Patent Judges*.

PAK, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellants request rehearing of our Decision of July 24, 2009 ("Decision") wherein we sustained the Examiner's § 103 rejections of claims 1 through 7, 9 through 17 and 19 through 44.

In sustaining the Examiner's 35 U.S.C. § 103 rejections above, we stated at pages 12-13 of the Decision:

Appellants do not dispute the Examiner's finding that *Sylvan teaches a coffee filter cartridge identical to the beverage filter cartridge recited in claims 1, 12, and 44, except for the claimed pleats, flutes or corrugations on the side wall of the filter employed.*

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Sylvan specifically mentions employing a filter having a generally truncated cone shape or a truncated triangular prism (*identical or similar to a fan shape*) in its coffee filter cartridge. However, it is not limited to a filter having such a shape. It teaches that its filter can be in any predetermined shape *useful* for its coffee filter cartridge.

Spiteri teaches a filter having a predetermined shape, i.e., *a fan-shaped filter* comprising a side wall having folds and pleats (corresponding to the claimed pleats, flutes or corrugations on the side walls of filters) for a conventional coffee brewer. Spiteri teaches adding folds and pleats to the side wall of a fan-shaped filter useful for any conventional coffee brewers, inclusive of those taught by Sylvan. The pleated fan-shaped filter, according to Spiteri, requires adding an additional amount of the filter material (area) to a conventional fan shape filter. In other words, adding folds and pleats to the conventional fan-shaped filter provides a more effective filtering area (thus allowing a higher liquid flow rate as required by Sylvan). Appellants do not dispute that pleats and folds in a conventional filter enlarges or increases an effective filtering area.

Spiteri also teaches that the filter can be geometrically configured in size dimensions appropriate for the interior of conventional coffee brewers. Implicit in this teaching of Spiteri is that one of ordinary skill in the art can geometrically configure its filter to a desired size dimension appropriate for a given filter cartridge, including *the one required by Sylvan*. *Sylvan teaches that for its particular coffee filter cartridge, the filter employed must be configured to maintain a substantial space between the filter and the interior wall of the cartridge (even when the filter is wetted) for the purpose of enhancing a filtering rate.*

Further, Spiteri teaches that rigid properties can be added to a paper filter by means of folding and pleating the paper filter and when at least minimum of four folds are added, they act as a supporting member. *More importantly, however, Sylvan teaches that for its particular coffee brewer system, using an*

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appropriate material in constructing its filter is important in imparting a desired rigidity. Specifically, Sylvan teaches using a material, such as a light-weight two-phase heat sealable paper of cellulosic and synthetic fibers, to make a totally self supporting filter which will not collapse or sag against the inner walls of the cartridge, when wet. [(Emphasis added.)]

Appellants contend at pages 1 through 4 of the Request for Rehearing that the Board erred in finding that:

- 1) Spiteri teaches employing a fluted or pleated filter (a fan shaped filter) in any conventional coffee brewers (Decision, FF 12);
- 2) “Sylvan is not limited to employing a filter having a generally truncated cone shape or a truncated triangular prism (identical or similar to a fan shape) in its coffee filter cartridge; it teaches that its filter can be in any predetermined shape *useful* for its coffee filter cartridge (col. 2, ll. 8-16 and col. 3, ll. 13-15)” (Decision, FF 5) (emphasis added); and
- 3) “Sylvan desires a filtering system useful for providing a high flow rate (col. 1, ll. 43-45)” (Decision FF. 4).

We have reviewed our Decision in light of these contentions presented by Appellants. However, we are not persuaded that our Decision contains any reversible or harmful error. We address each of Appellants’ contentions below.

First, contrary to Appellants’ contention, Spiteri does not teach that its filter is useful for only gravity-type drip brewing. Spiteri teaches at paragraph 0001 that:

[Its] invention relates to filtration devices, and more particularly to a home brewing by filtering product through a permeable porous paper [i.e., a filter,] capable of brewing a number of cups of infusing beverages.

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Spiteri further teaches at paragraph 0021 that:

Referring now to the drawings and in particular to FIG. 1[,] [t]here is shown a top view of a partially folded filter generally designated 10. The filter of a fan shaped configuration, having a top opening 12, a bottom edge 14, a continuously formed arcuate edge 16, ... folds 18*a*, 18*b*, 18*c* and 18*d*.... The filter 10 is geometrically configured in size dimension and configuration to be received within the interior or a convention coffee brewer means such as an electric drip brewer.

Although Spiteri exemplifies an electric drip brewer, its teaching is not limited to drip brewer means. *See Merck & Co. v. Biocraft Labs., Inc.*, 874 F.2d 804, 807 (Fed. Cir. 1989)(*quoting In re Lamberti*, 545 F.2d 747, 750 (CCPA 1976))("[T]he fact that a specific [embodiment] is taught to be preferred is not controlling, since all disclosures of the prior art, including unpreferred embodiments, must be considered."); *In re Fracalossi*, 681 F.2d 792, 794 n.1 (CCPA 1982)(A prior art reference's disclosure is not limited to its examples.). It broadly refers to a fan shaped filter useful for filtration devices in general and "conventional coffee brewer means" in particular. Consistent with such a broad disclosure, Spiteri further teaches that the filter can be geometrically configured in size dimension consistent with the configuration of the filter receiving interior or a conventional coffee brewer means. Accordingly, we find no error in our finding at page 12 of our Decision that "Spiteri teaches...any conventional coffee brewers, inclusive of those [conventional coffee brewers] taught by Sylvan." Appellants have not disputed that Sylvan's coffee brewers are conventional coffee brewers.

In any event, Appellants' argument does not identify any reversible or harmful error in the Decision. As is apparent from our analysis at pages 12 and 13 of the Decision, we found that Spiteri teaches adding folds and pleats

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known for increasing an effective filtering area to a fan-shaped filter which is structurally similar to the shape of Sylvan's filter, e.g., a generally truncated cone shape or a truncated triangular prism. More importantly, as indicated at page 15 of the Decision,

Since Appellants do not dispute that the addition of flutes or pleats in a conventional filter is known to increase the effective filtering area, Sylvan's desire for a high flow rate would have led one of ordinary skill in the art to employ flutes or pleats in the side wall of the filter used in Sylvan's coffee filter cartridge.

Thus, even if Spiteri does not teach adding flutes or pleats to a filter useful for any conventional coffee brewers, one of ordinary skill in the art would have been lured to employ flutes or pleats known for increasing an effective filtering area on the side wall of the filter employed in Sylvan's beverage filter cartridge, motivated by a reasonable expectation of successfully increasing an effective filtering area for the purpose of obtaining a higher flow rate desired by Sylvan.

Second, Appellants correctly point out that column 2, lines 8-16, of Sylvan referred to in our finding states:

This invention features a beverage filter cartridge including an impermeable pierceable base having a predetermined shape and an opening at one end. There is a self-supporting wettable filter element disposed in the base sealingly engaged with the opening of the base and having a form different and smaller than the predetermined shape of the base so that the filter element diverges from the base and divides the base into two sealed chambers.

Moreover, as acknowledged by Appellants, Sylvan, at column 3, lines 13-15, discloses that "[t]he filter *can have* the shape of a cone, a truncated cone, or

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a triangular prism which *fans out* and blends into a circular base” (emphasis added.). Consistent with the above description, we found at page 7 of the Decision that “Sylvan is not limited to employing a filter having a generally truncated cone shape or a truncated triangular prism (identical or similar to a fan shape) in its coffee filter cartridge; it teaches that its filter can be in any predetermined shape *useful* for its coffee filter cartridge” (emphasis added). In other words, any predetermined filter shape *useful* for Sylvan’s coffee filter cartridge is described as including those features discussed at column 2, lines 8 through 16, and column 3, lines 13 through 15, of Sylvan as is apparent from the Relevant Findings of Fact section located at pages 5 through 7 of the Decision. Moreover, as is apparent from our analysis at page 12 of the Decision, any *predetermined* filter shape *useful* for Sylvan’s coffee filter cartridge *requires, among other things*, that

the filter employed must be configured to maintain a substantial space between the filter and the interior wall of the cartridge (even when the filter is wetted) for the purpose of enhancing a filtering rate.

This requirement is consistent with the above description at column 2, lines 8-16 and column 3, lines 13 through 15 of Sylvan. In fact, such description is necessary to support our finding at page 12 of the Decision that Sylvan’s coffee filter cartridge is identical to the beverage filter cartridge recited in claims 1, 12, and 44, except for the claimed pleats, flutes or corrugations on the side wall of the filter employed. Thus, we find no error in our finding at page 7 of the Decision that “Sylvan... teaches that its filter can be in any predetermined shape *useful* for its coffee filter cartridge (*col. 2, ll. 8-16 and col. 3, ll. 13-15*)” (emphasis added).

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Even if our finding is read in vacuum and is treated as an error, Appellants still have not identified any reversible or harmful error in the Decision. As stated at page 12 of the Decision:

Appellants do not dispute the Examiner's finding that Sylvan teaches a coffee filter cartridge identical to the beverage filter cartridge recited in claims 1, 12, and 44, except for the claimed pleats, flutes or corrugations on the side wall of the filter employed.

Sylvan specifically mentions employing a filter having a generally truncated cone shape or a truncated triangular prism (*identical or similar to a fan shape*) in its coffee filter cartridge. [(Emphasis added.)]

In addition, we found that Spiteri teaches adding folds and pleats known for increasing an effective filtering area to a fan-shaped filter which is structurally similar to the shape of Sylvan's filter, e.g., a generally truncated cone shape or a truncated triangular prism. More importantly, as indicated at page 15 of the Decision,

Since Appellants do not dispute that the addition of flutes or pleats in a conventional filter is known to increase the effective filtering area, Sylvan's desire for a high flow rate would have led one of ordinary skill in the art to employ flutes or pleats in the side wall of the filter used in Sylvan's coffee filter cartridge.

Thus, regardless of the status of the alleged error in our finding directed to the language "any predetermine [filter] shape useful for [Sylvan's] filter cartridge" at page 12 of the Decision, one of ordinary skill in the art would have been lured to employ flutes or pleats known for increasing an effective filtering area on the side wall of the filter employed

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in Sylvan's beverage filter cartridge, motivated by a reasonable expectation of successfully increasing an effective filtering area for the purpose of obtaining a higher flow rate desired by Sylvan.

Finally, contrary to Appellants' contention, Sylvan teaches the desirability of increasing a liquid flow rate (a filtration rate). Sylvan, at column 1, lines 13 through 45, discusses a slow filtration rate as one of the shortcomings of conventional beverage or coffee brewers employing beverage filter cartridges and indicates one of its objects as obtaining a high flow rate (a high filtration rate). Thus, we find no reversible or harmful error in stating at page 15 of the Decision that:

Since Appellants do not dispute that the addition of flutes or pleats in a conventional filter is known to increase the effective filtering area, Sylvan's desire for a high flow rate would have led one of ordinary skill in the art to employ flutes or pleats in the side wall of the filter used in Sylvan's coffee filter cartridge.

In reaching this determination, we have considered Appellants' statement at page 4 of the Request for Rehearing provided below:

[O]ne of [ordinary] skill in the art would have understood that increasing the filter area and flow rate of a Sylvan cartridge would reduce the contact time between the brew water and the coffee, reducing the strength of the coffee beverage produced.

However, this admitted knowledge of one of ordinary skill in the art does not indicate that one of ordinary skill in the art would have been led away from employing flutes or pleats in the side wall of the filter used in Sylvan's coffee filter cartridge. Rather, it indicates that one of ordinary skill in the art would have been led to employ the optimum number of flutes or pleats in

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the side wall of the filter used (to provide an optimum effective filtering area) in a given coffee filter cartridge, motivated by a desire to obtain various desired strengths of the coffee beverages consistent with the desired tastes of consumers. *In re Boesch*, 617 F.2d 272, 276 (CCPA 1980)("[D]iscovery of an optimum value of a result effective variable . . . is ordinarily within the skill of the art."); *In re Aller*, 220 F.2d 454, 456 (CCPA 1955)("[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation."). On this record, Appellants have not provided any objective evidence to show that the addition of flutes or pleats known for increasing an effective filtering area in the side wall of the filter used in Sylvan's coffee filter cartridge is not desirable.

In conclusion, based on the foregoing, we have granted Appellants' request to the extent that we have reconsidered our Decision, but we deny Appellants' request to make any change therein.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v).

DENIED

tc

WOLF GREENFIELD
600 ATLANTIC AVENUE
BOSTON, MA 02110

CIVIL COVER SHEET

E
09-2353
RBWJS-44
(Rev. 1/05 DC)

I (a) PLAINTIFFS KEURIG, INC.	DEFENDANTS HON. DAVID KAPPOS, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES) 88888	COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Allen S. Rugg Wolf, Greenfield & Sacks, P.C. 600 Atlantic Avenue Boston, MA 02210-2206 Tel: (617) 646-8000	Case: 1:09-cv-02353 Assigned To: Walton, Reggie B. Assign. Date: 12/11/2009 Description: General Civil

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)	III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <u>FOR DIVERSITY CASES ONLY!</u>																								
<input type="radio"/> 1 U.S. Government Plaintiff <input checked="" type="radio"/> 2 U.S. Government Defendant <input type="radio"/> 3 Federal Question (U.S. Government Not a Party) <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	<table style="width: 100%;"> <thead> <tr> <th></th> <th>PTF</th> <th>DFT</th> <th></th> <th>PTF</th> <th>DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td><input type="radio"/> 1</td> <td><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="radio"/> 4</td> <td><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="radio"/> 2</td> <td><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="radio"/> 5</td> <td><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="radio"/> 3</td> <td><input type="radio"/> 3</td> <td>Foreign Nation</td> <td><input type="radio"/> 6</td> <td><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place a X in one category, A-N, that best represents your cause of action and one in a corresponding Nature of Suit)

<input type="radio"/> A. Antitrust <input type="checkbox"/> 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> C. Administrative Agency Review <input type="checkbox"/> 151 Medicare Act Social Security: <input type="checkbox"/> 861 HIA ((1395m) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g) Other Statutes <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
<input checked="" type="radio"/> E. General Civil (Other)			
OR			
<input type="radio"/> F. Pro Se General Civil			
Real Property <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property Personal Property <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	Bankruptcy <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 Prisoner Petitions <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition Property Rights <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark Federal Tax Suits <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	Forfeiture/Penalty <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other Other Statutes <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 900 Appeal of fee determination under equal access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

3

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus-General <input type="checkbox"/> 510 Motion/Vacate Sentence	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights-Employment (criteria: race, gender/sex, national origin, discrimination, disability age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/PRIVACY ACT <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 American w/Disabilities-Employment <input type="checkbox"/> 446 Americans w/Disabilities-Other	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights-Voting (if Voting Rights Act)

V. ORIGIN

☒ Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from another district (specify)
 ☐ 6 Multi district Litigation
 ☐ 7 Appeal to District Judge from Mag. Judge

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 38 U.S.C. § 145-Civil Action for Issuance of Patent

VII. REQUESTED IN COMPLAINT ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____ **JURY DEMAND:** YES ☐ NO ☒ Check YES only if demanded in complaint

VIII. RELATED CASE(S) IF ANY (See instruction) YES ☐ NO ☒ If yes, please complete related case form

DATE 12/10/2009 **SIGNATURE OF ATTORNEY OF RECORD** 

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the Cover Sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence Use 11001 to indicate plaintiff is resident of Washington, D.C., 88888 if plaintiff is resident of the United States but not of Washington, D.C., and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II
- IV. CASE ASSIGNMENT AND NATURE OF SUIT The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of case.
- VI. CAUSE OF ACTION Cite the US Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASES, IF ANY If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.